

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

BURHAN MALLAK,

Defendant.

Cause Nos. CR 15-100-BLG-SPW

ORDER

On August 23, 2022, Defendant Mallak moved the Court to reduce the sentence under 18 U.S.C. § 3582(c)(1)(A). The Court appointed counsel and set a schedule. See Order (Doc. 69).

Counsel now moves for an extension of time to file an amended motion so that Mallak may exhaust his administrative remedies. *See* Mot. for Extension (Doc. 71) at 1–2. Pursuant to D. Mont. L.R. CR 47.1(a), counsel states that the United States does not object to the extension.

Section 3582(c)(1)(A) imposes “a mandatory claim-processing rule that must be enforced when properly invoked.” *United States v. Keller*, 2 F.4th 1278, 1282 (9th Cir. 2021) (per curiam). The Court cannot tell whether the United

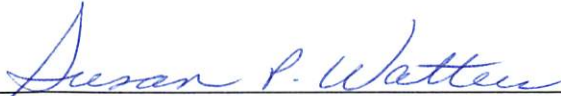
States' agreement to give counsel additional time to prepare an amended motion is also a waiver of objection to Mallak's failure to exhaust. The Court is not aware of any bar to Mallak's filing a motion after he has complied with the terms of the statute. The more prudent course of action, therefore, and the one counsel should follow in future, is to dismiss Mallak's motion for failure to exhaust.

Accordingly, IT IS ORDERED:

1. Mallak's motion (Doc. 68) is DISMISSED for failure to exhaust administrative remedies.

2. Counsel's motion for extension of time (Doc. 71) is DENIED AS MOOT.

DATED this 25th day of October, 2022.



Susan P. Watters
United States District Court